

Attachment 5

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. P-1187, SUB 2

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

FILED

JUN 18 2009

Clerk's Office
N.C. Utilities Comm.

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In the Matter of

Petition of Intrado Communications Inc. for)
Arbitration Pursuant to Section 252(b) of the)
Communications Act of 1934, as Amended,)
to Establish an Interconnection Agreement,)
with BellSouth Telecommunications, Inc.)
d/b/a AT&T North Carolina)

COMMENTS OF THE PUBLIC
STAFF ON OBJECTIONS TO
RECOMMENDED
ARBITRATION ORDER

NOW COMES THE PUBLIC STAFF – North Carolina Utilities Commission, by and through its Executive Director, Robert P. Gruber, and submits the following comments on the objections filed by Intrado Communications, Inc. (Intrado) and BellSouth Telecommunications, Inc., d/b/a AT&T North Carolina (AT&T) to the Commission's April 24, 2009 Recommended Arbitration Order (RAO). On May 26, 2009, Intrado and AT&T each filed objections to the RAO with Intrado objecting to Findings of Fact 3, 7, 8, 9, 10, 11, and 12 and AT&T objecting to Findings of Fact 1, 2, 3, and 13. On May 28, 2009, the Commission issued an Order Requesting Comments on Objections and Suspending Filing Date for Composite Agreement. Pursuant to this Order, the Public Staff submits the following comments on the Findings of Fact to which Intrado or AT&T has objected.

FINDING OF FACT NO. 1. *Intrado seeks to provide competitive 911/E911 service to public safety answering points (PSAPs) and other public safety agencies in North Carolina.*

FINDING OF FACT NO. 2. *The services that Intrado seeks to provide are telephone exchange services for which AT&T is required, pursuant to Section 251(c) of the Act, to offer interconnection. AT&T is also required to offer interconnection as to any other telephone exchange service or exchange access service Intrado may offer.*

In its first objection, AT&T argues that the 911/E911 service offered by Intrado to PSAPs does not qualify as a "telephone exchange service" for which AT&T must offer interconnection pursuant to Section 251(c) of the Telecommunications Act of 1996 (TA96). AT&T made the same argument in its proposed order. It would be reasonable to contend that AT&T is estopped from disputing that the service Intrado proposes to provide, a one-way service, is not "telephone exchange service" when it has entered into interconnection agreements with one-way paging companies where one-way paging is treated as local traffic.

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The Public Staff notes that, pursuant to the authority delegated to it, the Wireline Competition Bureau of the Federal Communications Commission (FCC) has sought comment in consolidated arbitration proceedings between Intrado Communications of Virginia Inc. and Central Telephone Company of Virginia and United Telephone – Southeast, Inc. and Intrado Communications of Virginia Inc. and Verizon South Inc. and Verizon Virginia Inc. in WC Docket Nos. 08-33 and 08-185. The request for comments concerns the specific issue of how competition in provisioning the 911 network to the PSAPs and other public safety agencies would impact the provision of public safety services in Virginia. (See DA 09-1262, June 4, 2009, Comment Sought on Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings)

Based upon this request for public comment, it appears to the Public Staff that the FCC's Wireline Competition Bureau may not question Intrado's right to interconnect subject to Section 251(c) of TA96. Instead, the request for comment is concerned with the impact an arrangement such as that proposed by Intrado could have on the 911 network. The Public Staff believes that the interconnection between AT&T and Intrado as determined in the Commission's RAO will not adversely affect the provision of 911 service in North Carolina.

The Public Staff believes the Commission thoroughly considered the arguments presented by the parties at arrives at its well-reasoned conclusions on this issue. It correctly noted that this is a case of first impression in North Carolina and the Public Staff believes the Commission correctly applied federal law to the issues underlying these findings. The Public Staff does not believe the arguments made by AT&T in its objections shed any new light on this issue. Therefore, the Public Staff does not believe the Commission should alter its holdings in Findings of Fact 1 and 2.

FINDING OF FACT NO. 3. The interconnection agreement (ICA) should contain rates in instances where AT&T is the 911 service provider to the Public Safety Answering Point (PSAP) and when Intrado is the 911 service provider. The rates should be those as proposed by AT&T with respect to Scenario 1 and that part of Scenario 3 pertaining to Intrado-to-AT&T interconnection. As for the appropriate rates in Scenario 2 and that part of Scenario 3 pertaining to AT&T-to-Intrado interconnection, AT&T should resume negotiations and include any agreement in the composite agreement. If the parties cannot agree, each party should submit filings to the Commission setting forth why its proposals are more reasonable than the other's.

AT&T and Intrado both object, but on different grounds. AT&T objects to the Commission's exercise of jurisdiction over rates arising under Section 251(a) of TA96. AT&T contends that it did not voluntarily negotiate rates arising out of an AT&T-to-Intrado interconnection pursuant to Section 251(a) and therefore these rates are not properly before the Commission in a Section 252 arbitration. AT&T did not argue this point in its proposed order, and its citations to the various joint issues matrices do not provide much clarification. AT&T witness Pellerin's testimony is also unclear on this

issue. While witness Pellerin states that rates for an AT&T-to-Intrado interconnection should not fall under 251(c), she also testified at page 22 of her direct testimony that "it is only appropriate to include relevant prices in the ICA for Scenarios 2 and /or 3 to the extent the Commission requires inclusion of terms and conditions for such interconnection." Moreover, AT&T witness Constable included rates for these Scenarios in an exhibit to his testimony. As such, it was reasonable for the Commission to conclude that AT&T had voluntarily negotiated these terms and to order the parties to *pursue further negotiations*.

Intrado objects to negotiating further regarding the rates it may charge AT&T and contends that the interconnection rates it has proposed are reasonable and should be adopted by the Commission. According to Intrado, because AT&T has not proven that Intrado's rates are unreasonable and because these charges apply to any carrier seeking to connect to Intrado's network, the Commission should find such rates to be reasonable and order their inclusion in the ICA.

The Public Staff agrees with the Commission that there is a paucity of evidence in the record regarding the reasonableness of Intrado's proposed rates. Intrado, which has or should have the burden of showing that its proposed rates are reasonable, has not provided cost studies or any support for its rates. The fact that Ohio has adopted the rates is not sufficient grounds for adopting them here in the absence of other evidence. The Commission chose the more prudent option in ordering the parties to negotiate the rates and, if there is no agreement, to make filings setting forth why their proposed rates are more reasonable.

FINDING OF FACT NO. 7. The ICA should require Intrado to establish trunking to the appropriate Point of Interconnection (POI) on AT&T's network while acknowledging Intrado's right to provision these facilities through a third party.

The Commission directed the parties "to provide reciprocal trunk group arrangements, to include facilities, to insure the reliable exchange of traffic between their networks." Intrado asks that the Commission clarify what it meant by "reciprocal trunk group arrangements."

In this issue, the parties disputed the appropriate language to include in the ICA regarding Intrado's establishment of trunking to AT&T's selective routers when AT&T is the designated 911/E911 service provider. The Commission concluded that the language should clearly allow Intrado to establish trunking either through its own facilities or those of a third party. In the context of this issue and the Commission's conclusion, the Public Staff believes that the phrase "reciprocal trunk group arrangements" simply refers to each party's equal responsibility to establish any necessary trunking to the other party's selective router under the same terms and conditions available to both parties.

FINDING OF FACT NO. 8. AT&T is required to provide interconnection for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, at any technically feasible point within AT&T's network when Intrado seeks to interconnect with AT&T.

FINDING OF FACT NO. 10. AT&T must allow Intrado to interconnect at a technically feasible point on AT&T's network when Intrado seeks to interconnect with AT&T's network as prescribed by Part 51.305 in the Federal Communication Commission (FCC) rules.

Intrado has requested that the Commission clarify that Intrado is entitled to designate the location of the POI on AT&T's network, including a single Point of Interconnection (POI). The Public Staff believes the Commission's RAO is clear on AT&T's obligations to provide interconnection to Intrado. However, the Public Staff is not opposed to the Commission's clarifying that Intrado may designate the location of the POI on AT&T's network, including a single POI as provided by Part 51.305 of the FCC's rules.

FINDING OF FACT NO. 9. The parties may negotiate and establish multiple POIs, or different POIs for different types of services.

Intrado notes that in the Commission's discussion of Matrix Issues 4, 4(a), 4(b), and 4(c), it stated that if the parties cannot agree voluntarily upon either the location or number of POIs, the Commission *may*, in its own discretion, determine both the number and location(s) of the POI. Intrado requests that the Commission exercise this authority and order the POI to be located on Intrado's network when Intrado is the designated 911/E911 service provider.

The Commission explicitly declined to impose the requirement on AT&T that it be required to establish interconnection at Intrado's selective routers when Intrado served as the designated 911/E911 service provider. Intrado has not made any new arguments or provided additional support for its position. Therefore, the Public Staff recommends that the Commission's conclusion to allow the parties to negotiate for the establishment of multiple POIs, or service specific POIs, be upheld and affirm Finding of Fact 9.

FINDING OF FACT NO. 11. The Commission will not mandate any language in the ICA regarding meet point, but the parties are free to negotiate meet point locations, if agreed upon.

Intrado asks the Commission to delete the language allowing the parties to negotiate mutually agreeable meet point locations. Intrado contends that this language robs it of its right to designate the location of the POI pursuant to FCC rules and Section 251(c).

The Commission pointed out in its discussion that Part 51.305 of the FCC's rules does not provide guidance for the location of the POI when interconnecting using the meet point. The Public Staff concurs with this assessment. Without such guidance, the Public Staff does not believe the Commission has the authority to mandate a specific meet-point POI, or allow Intrado to designate one unilaterally. Further, Intrado has provided no new evidence that would compel the Commission to change its decision on this issue. As a result, the Public Staff believes the Commission should affirm Finding of Fact 11.

FINDING OF FACT NO. 12. *The interconnection of selective routers operated by AT&T and Intrado should follow the primary/secondary routing architecture currently in use by AT&T and other incumbent local exchange companies (ILECs) in North Carolina. In addition, automatic number identification (ANI) and automatic location identification (ALI) information that was initially transmitted to the serving AT&T end office during the 911 call shall be retained whenever the call is transferred between the parties' selective routers. Lastly, each party shall advise the other party of any system changes which it believes may impact the efficiency or reliability of the interconnected network, or might adversely impact the other party's provision of 911 service to the public.*

Intrado requests that the Commission clarify that the ANI and ALI information must be retained *and transferred* when the call is transferred to the other party's router. The Public Staff believes that the requirement to transfer the ANI and ALI information when the call is transferred between routers was implied in the Commission's conclusion. However, since this finding does not explicitly require the retained information to be transferred with the call, the conclusion should be clarified to require that the transferred call should retain the ANI and ALI information.

FINDING OF FACT NO. 13. *Section 6.1 of Appendix ITR of the original 13-state template should be modified to reflect a reciprocal initial trunk forecasting requirement for AT&T and Intrado and to require each party to review the forecast it receives and advise the other party of any problems that may impact its trunk forecast. The ordering language Intrado proposed for Section 8.6.1 of Appendix ITR is reasonable and reciprocal and AT&T should be required to use Intrado's designated ordering process to obtain services from Intrado.*

AT&T objects to the requirement that it use Intrado's ordering process on the basis that the process is an untested system that does not conform to industry standards and that such a requirement would impose additional costs for AT&T. AT&T argues that its ordering process is the only one that is suitable for use. The Public Staff noted in its Proposed Order the limited evidence from both parties concerning the ordering process. In addition, the Public Staff noted that the processes proposed by both AT&T and Intrado are similar in that they both use Access Service Requests. AT&T has not provided any new arguments that should compel the Commission to


change its ruling requiring AT&T to use Intrado's ordering process. The Public Staff believes that the language adopted by the Commission is reasonable and reciprocal and that Finding of Fact 13 should be affirmed.

WHEREFORE, the Public Staff respectfully requests that the Commission consider the foregoing in its deliberations in this proceeding.

Respectfully submitted, this the 18th day of June, 2009.

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CERTIFICATE OF SERVICE

I do hereby certify I have this day served a copy of the foregoing Comments on each of the parties of record in this proceeding or their attorneys of record by causing a copy of the same to be deposited in the United States Mail, postage prepaid, properly addressed to each.

This the 18th day of June, 2009.


Lucy E. Edmondson